

SERVED: April 30, 1992

NTSB Order No. EA-3547

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 16th day of April, 1992

BARRY LAMBERT HARRIS,
Acting Administrator,
Federal Aviation Administration,

Complainant,

v.

Docket SE-8839

KIM BOARDMAN,

Respondent.

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge Jerrell R. Davis issued in this proceeding on July 14, 1989, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed an order of the Administrator suspending respondent's airline transport pilot certificate for fifteen days on an allegation that he violated section 91.9 of the Federal Aviation

¹An excerpt from the hearing transcript containing the initial decision is attached.

Regulations ("FAR"), 14 C.F.R. Part 91² by striking a parked helicopter with the right wing of aircraft N2641L, a Cessna Model 402C, which respondent was then taxiing across an airport parking area.

Respondent asserts on appeal that the law judge's initial decision is erroneous and should be reversed.³ The facts are undisputed and the only issue before us is whether respondent's operation of N2641L was careless under Section 91.9. Respondent's aircraft was parked behind the helicopter when respondent arrived at the airport.⁴ It was the very early morning hours, and it was dark outside. There was a great deal of moisture on the aircraft's windows which required respondent to wipe down the windshield at least twice, turn his heater up to evaporate the moisture, and open the right storm window to improve his visions.⁵ Respondent observed the helicopter near his aircraft, but decided that

²FAR section 91.9 provided at the time of the incident as follows:

"§91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The Administrator has filed a brief in reply.

⁴Respondent testified that the flight was a cargo-carrying flight operated under FAR Part 135.

⁵Respondent testified that the aircraft's left windshield was completely defrosted but that he still had some moisture on the right windshield at the commencement of his taxi.

he could successfully negotiate his aircraft around it and cross the ramp in order to get to the taxiway.⁶ He was wrong. His aircraft struck the helicopter, causing damage and rendering both aircraft unairworthy.

Both in his response to the FAA's letter of investigation and in his answer to the Administrator's complaint, respondent claimed that even though he was extremely cautious during his preflight and was taxiing very slowly at the time of the incident, his vision was distorted as a result of the glare produced by the lights from a nearby building shining through his wet aircraft windshield. In response to a question by the law judge as to what was the cause of the incident, respondent testified that he thought he " ... misjudged when I looked at the helicopter and the wing. I think that when I was in the airplane looking over the right window with the beads and the light shining through it I must have rolled a little bit too forward and then made my turn." (TR-97). Had his vision not been impaired, he surmised, he would have stopped the taxi, shut down the engine, and reoriented himself as to his aircraft's location

⁶The Administrator presented un rebutted evidence that respondent cut across an area where aircraft including the helicopter were properly parked for the night.

in relation to the helicopter. (TR-106-107).⁷ The law judge concluded that respondent's operation was careless under Section 91.9 in that he exercised poor judgment and that his actions were inherently unsafe.

Upon consideration of the briefs of the parties, and of the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order. For the reasons that follow, we will deny respondent's appeal. We adopt the law judge's findings as our own.

Respondent argues that he made a "mistake in judgment," but that he was not careless under FAR §91.9. We disagree. Notwithstanding the fact that it was dark outside and that his vision was obscured, respondent attempted to taxi across a parking area where he knew the helicopter was parked, leaving himself only a narrow area in which he could safely operate. We agree with the law judge that given these conditions, respondent was careless. It is irrelevant that he wiped his windshield twice in an attempt to clear his view and that he tried to be cautious by taxiing slowly. A

⁷The law judge found that had respondent been sufficiently alert to the possible hazards of taxiing an aircraft under the conditions he described, he would not have hit the helicopter. Respondent's claim that this finding was erroneous as there is no evidence that he hit the helicopter due to inattention is without merit. The law judge found that respondent was inattentive to the dangers inherent in operating an aircraft in narrow confines when visibility is poor, not that respondent was inattentive in his operation of the aircraft.

reasonably prudent pilot would not have attempted such a maneuver under similar circumstances, and respondent's error in judgment, namely, his continuing to taxi with impaired vision, was careless under FAR §91.9.

ACCORDINGLY, IT IS **ORDERED THAT:**

1. Respondent's appeal is denied;
2. The Administrator's order and the initial decision are affirmed; and
3. The 15-day suspension of respondent's airline transport pilot certificate shall commence 30 days after service of this order.⁸

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁸For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).